IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.08.2005

CORAM:

THE HON'BLE MR.JUSTICE P.SATHASIVAM
and
THE HON'BLE MR.JUSTICE AR.RAMALINGAM

W.P.No.7220 of 2002

1. Union of India rep. by
   The Additional Director General
   AV HQ, Avadi, Chennai 600 054.

2. The Sr. General Manager
   Heavy Vehicles Factory
   Avadi, Chennai 600 054. .. Petitioners

vs.

1. The Central Administrative Tribunal
   rep. by its Registrar
   High Court Buildings
   Chennai 600 104.

2. M. Annamalai .. Respondents

Petitions filed under Article 226 of the Constitution of India praying for an issuance of a writ of certiorari as stated therein.

For petitioners : Mr. S.M. Deenadayalan
A.C.G.S.C.

For respondents : Mr. R. Singaravelu for R.2

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ORDER

(ORDER of the Court was made by P.SATHASIVAM,J.)

Aggrieved by the order of the Central Administrative Tribunal, Madras Bench, dated 11.09.2001 made in O.A.No.40 of 2001, quashing the order of compulsory retirement and reinstating the applicant in service with all consequential benefits, Additional

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Director General and Senior Manager of Heavy Vehicles Factory, Avadi, Chennai 600 054, have filed the above writ petition.

2. The brief facts which are required for disposal of the writ petition are stated hereunder:

The second respondent herein, viz., M. Annamalai, was working as Medical Assistant, Heavy Vehicles Factory (in short "HVF"), Avadi, Chennai 600 054. A report dated 16.12.1996 was received from Principal Medical Officer (in short "PMO"), HVF Hospital along with the complaint of one Mumtaj Begum, female attendant to an in-patient in male medical ward regarding alleged misbehaviour by M. Annamalai, Medical Assistant. In her complaint, Mumtaj Begum has stated that on 13.12.1996 night at about 9.00 p.m. M. Annamalai, Medical Attendant called her to the sisters' duty room for collecting tablets for the patient. When she went there, instead of giving tablets, he told her that he had developed some fascination for her and asked her whether she is willing to fulfill his desire. She objected to his request and warned that he should not behave with her in such a manner. Then, the said Annamalai offered her a 50/- rupee note and also assured her that he would give her more if she require. She went off from there and lied down next to the patient on the cot. At about 01.00 a.m., she felt her saree moving up her legs. She woke up alarmed and found that Annamalai was standing near the cot, pushing her saree. She shouted at him and asked him to get out. There was one more patient in the room, viz., Krishnan and his attendant Andal. Mumtaj Begum did not report the matter to the duty Sister or duty Medical Officer, because of fear and shame. The next day, i.e., on 14.12.1996, she disclosed the matter to her family members and later they informed the Duty Sister of the male medical ward, who in turn informed the Medical Officer on duty.

3. Based on the report of PMO, HVF Hospital, as per the complaint received from Mumtaj Begum, M. Annamalai was placed under suspension with effect from 20.12.1996 and was subsequently charge sheeted under Rule 14 of Central Civil Service (Classification Control & Appeal) Rules, 1965, for committing offence of misconduct, viz., alleged misbehaviour with female attendant of an in-patient, attempt to outrage the modesty to Mumtaj Begum, and conduct unbecoming of a Government servant as per Rule 3(1)(iii) of CCS (Conduct Rules), 1964.

4. The said Annamalai denied the charges in his reply dated 13.03.1997; a Court of Enquiry was ordered on 07.04.1997, to enquire into the charges framed against him. The Enquiry Officer, after conducting the enquiry in accordance with the Rules, submitted his proceedings. The Enquiry Officer concluded that the charges framed against him were established. A copy of the enquiry report was forwarded to Annamalai on 17.12.1997, directing him to make any representation. Thereafter, he submitted a representation. The Disciplinary Authority - General Manager, HVF, after examining the

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reply and in the light of the documentary evidences available on record, concurred with the findings of the Enquiry Officer and held M.Annamalai guilty of the charges framed against him. Since the charges were of a serious nature of sexual harassment involving the moral turpitude of the employee, Disciplinary Authority, imposed the penalty of "dismissal from service" w.e.f. 03.3.1998.

5.Aggrieved by the order of dismissal, the said Annamalai submitted an appeal dated 19.03.1998 to the appellate authority, viz., the Additional Director General (AV HQ). The appellate authority, after considering the appeal with reference to the relevant records, dismissed his appeal. Meanwhile, Mumtaj Begum filed a criminal complaint against Annamalai. By order dated 08.07.1998, Judicial Magistrate No.I, Poonamallee in C.C.No.2 of 1999 acquitted him on the basis of doubt. The said Annamalai filed O.A.No.682 of 1998 before the Central Administrative Tribunal, Chennai challenging the orders of the disciplinary authority dated 03.03.1998 and the appellate authority dated 30.06.1998. The Central Administrative Tribunal, by order dated 18.04.2000, set aside the order of the appellate authority and remitted the matter back to him for reconsideration. The appellate authority, reconsidered the matter and modified the penalty of "dismissal from service" to "compulsory retirement" by order dated 05.09.2000. Questioning the said order of compulsory retirement, the said Annamalai filed another O.A.No.40 of 2001 before the Central Administrative Tribunal. By the impugned order, the Tribunal allowed the said application on 11.09.2001 on the ground that there is no evidence to substantiate the charge. Aggrieved by the above decision, the Department has filed the present writ petition.

6. Heard Mr. S.M. Deenadayalan, learned Additional Central Government Standing counsel for petitioners and Mr. R. Singaravelan, learned counsel for the second respondent.

7. The points for consideration in this writ petition are,

(i) Whether the Department has proved the charges leveled against the second respondent herein and the ultimate punishment imposed by the appellate authority is sustainable?

(ii) Whether the Central Administrative Tribunal is justified in holding that it is a case of "no evidence" and setting aside the order of punishment?

8. In view of narration of facts in the earlier part of our order, there is no need to refer the same once again. The reading of

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the impugned order shows that since the complainant, viz., Mumtaj Begum was not examined before the Enquiry Officer and no other eye witness was examined to prove the alleged incident, the Tribunal, after finding that it is a case of "no evidence", set aside the modified punishment, viz., compulsory retirement and allowed the application of the applicant/second respondent herein. The learned Additional Central Government standing counsel appearing for the petitioners/HVF, by drawing our attention to the enquiry proceedings and the report of the Enquiry Officer submitted that though the complainant was not examined, the Department basing reliance on her compliant dated 14.12.1996, examined Dr.U.Revathi, STMO, HVF Hospital as PW.1 and Smt.Therasamma Girijanath as Pws.2. On the side of the delinquent, viz., M. Annamalai, one Andal was examined as DW.1, Jeevajothi, Senior Nurse, HVF Hospital as DW.2, M. Murugan, Ward Sahayak as DW.3 and M. Annamalai, Medical Assistant/delinquent himself as DW.4.

9.It further shows that PW.1 - Dr.U.Revathi was not on duty on 13.12.1996. But as PW.1 she deposed that she came to know about the incident at 13.00 hours on 14.12.1996 and also stated that she received oral complaint from S. Mumtaj Begum on the next day of the incident, viz., 14.12.1996. She narrated the complaint made by Mumtaj Begum before the Enquiry Officer. The following question and answer given by PW.1 are relevant.

> "12. Q. Whether your statement was based on the statement of Smt.S.Mumtaj Begam?
> Ans. Yes. My statement was based on the statement of Smt. S. Mumtaj Begam. She narrated the incident to me and later to Dr.B.Rajendran, PMO, HVF Hospital while I was also present on 14.12.1996 at 1900 hrs.
>
> 17. Q. When did Smt.S.Mumtaj Begam narrate the incident?
> Ans. Smt. S. Mumtaj Begam narrated the incident first on 14.12.1996 at 13.00 hrs. to me.
>
> 18. Q. Who were all present in the room while she narrated the incident?
> Ans. Dr. B. Rajendran, PMO, Myself, Smt. S. Mumtaj Begam, were present when she narrated it again at 1900 hrs on 14.12.1996.
>
> 19. Q. How Smt. S. Mumtaj Begam appeared during her narration?
> Ans. Her face appeared emotional. She had already narrated the incident 2 to 3 times.

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First time she narrated to Smt. Therasamma Girijanath, Sr. Nurse and second time narrated to myself at 13.00 hrs. on 14.12.96 and third time narrated the same incident to Dr. B. Rajendran, PMO at 19.00 hrs. on 14.12.96.

21. Q. When Smt. Andal was enquired what was stated by Mrs. Andal?
Ans. Smt. Andal was also enquired on 14.12.1996 at 19.00 hrs. in my presence by Dr. D. Rajendran, PMO. Smt. Andal said that she did not see the incident as she was having poor eye sights. She also narrated that she did not hear the exact words of the shout of Smt. S. Mumtaj Begam in the night and she told that she did not notice anybody running away. She added that Smt. S. Mumtaj Begam was crying and she narrated that Shri M. Anamalai came near and he lifted her saree and hence Smt. S. Mumtaj Begam shouted at him to get out from that room.

25.Q. Ms. Andal told what exact words used by Smt. S. Mumtaj Begam?
Ans. She heard as if Smt. S. Mumtaj Begam shouted at somebody to get out from the room and she got up from the bed.

31.Q. Can you comment about the incident whether it was a minor incident or something major happened as per her statement?
Ans. She looked upset and the statement seems to be consistent. She narrated the same incident twice. Once she told me on 14.12.1996 and again on 14.12.1996 while enquired by Dr. B. Rajendran, PMO at 1900 hrs.

37. Q. When Smt. S. Mumtaj Begam reported in oral about the incident, did you ask her why she had not reported at least in oral or in writing to the Duty Doctor or the Duty Nurse on the night itself?
Ans. I asked this question with Smt. S. Mumtaj Begam. She stated that she did not report the matter to the Duty Doctor or the Duty Nurse on the same night, as she was ashamed of because of the incident. However she informed about the incident to her brother and as per the advise of her brother she reported the matter to the Duty

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Nurse as well as the Duty Doctor on the very next day (i.e. 14.12.1996).

40. Q. You have stated that Smt. S. Mumtaj Begam has narrated the incident with emotional condition. Guilty conscious persons also look emotional. Can you comment?
Ans. She wept, and she was crying. That much only I could observe on that day. "

Finally, in respect of question No.66 by the Enquiry Officer, PW.1 has narrated about the incident as complained by S. Mumtaj Begum.

10.PW.2 though not present on the date of incident, i.e., on 13.12.1996, she informed the Enquiry Officer that father of the patient has told about the incident. After getting the information, she reported the matter to the duty Medical Officer. The following question and answer before Enquiry Officer are relevant.

"74. Q. Whether Smt. S. Mumtaj Begam narrated the incident or the boy's father narrated the incident?
Ans. Both narrated the incident to me.

76. Q. Please tell the exact words used by Smt. S. Mumtaj Begam?
Ans. Smt. S. Mumtaj Begam narrated to me as follows:
She was called by Shri M. Annamalai, Medical Assistant to the Night duty sisters room for giving medicines to the patient. When she went for getting medicines he tried to give her Rs.50/- and told her if she required more money he would give. Smt. S. Mumtaj Begam refused that and went back to male medical ward. She had slept with the patient. Then Shri M. Annamalai, Medical Assistant came and touched her leg then she shouted at him then he went out. "

11. The enquiry proceedings further show that both PW.1 and PW.2 were subjected to cross examination by the delinquent. The first defence witness Andal, is an attendant of the patient next to the bed of patient of S.Mumtaj Begum. She admitted the presence of S.Mumtaj Begum and her nephew, on the relevant date i.e., on 13.12.1996. Though she was examined as DW.1, the following question and answer supports the case of the complainant, viz., S. Mumtaj Begum.

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> 96. Q. What narration was made by Smt. S. Mumtaj Begam about the alleged incident in the night on 13.12.1996?
> Ans. In the morning around 05.00 to 06.00 hrs. on 14.12.1996 Smt. S. Mumtaj Begam was weeping and started narrating that shri M. Annamalai, Medical Assistant tried to outrage her Modesty in the previous night. When I questioned her that why she did not tell about the incident to me at that time itself, she replied that she did not want to disturb me. I stated that Shri M. Annamalai, Medical Assistant would have not done such a thing because Shri M. Annamalai, Medical Assistant had distributed medicines in the next morning to my husband and her nephew. "

In the later part, she admitted that in her earlier statement "I was fall in sleep in that night, heard a noise from Smt.S.Mumtaj Begum, I woke up, but i did not find anybody." It is clear that she was sleeping in the next bed and she heard noise from S. Mumtaj Begum. Though she denied the presence of Annamalai, the evidence of DW.1 prove the presence of Mumtaj Begum in the hospital on 13.12.1996 and also she confirmed that she woke up on hearing alarm from Mumtaj Begum.

12.Even DW.2 Ward Sahayak, has admitted that around 9.00 to 10.00 p.m. on 13.12.1996, S.Mumtaj Begum went behind M. Annamalai, Medical Assistant for getting medicine. Though he did not say anything about the incident as claimed in the complaint, he admitted the fact that Mumtaj Begum went along with Annamalai, Medical Assistant for getting medicine.

13. An analysis of the materials placed before the Enquiry Officer shows that though the complainant Mumtaj Begum was not examined, the details of the complaint would show, she had explained the incident that had taken place on 13.12.1996 and that was clearly explained by witnesses who were examined on the side of the Department. Even the defence witnesses though denied the manner of incident as claimed in the complaint, admitted the presence of Mumtaj Begum in a male ward and staying along with her nephew, who is taking treatment for snake bite.

14.It is also brought to our notice that the delinquent had not made any plea for not examining the complainant. Further, as rightly pointed out in an incident as sensitive as this, it is not advisable to ask the complainant to come and depose as well as narrate the events, which would only embarrass her. It is not in dispute that she had given a detailed statement and her statement was used as evidence in departmental enquiry. Merely because the

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complainant was not examined before the Enquiry Officer, in a sexual harassment case, it cannot be construed that the enquiry report is vitiated particularly in the light of the evidence of PW.1 -Duty Doctor and PW.2 – Duty Nurse.

15.The disciplinary authority as well as the appellate authority considered the two main witnesses, viz., Dr.U.Revathi, STMO (PW1) and Therasamma Girijanath, Senior Nurse Grade II (PW2) were examined from the side of the Department and vital document, viz., complaint given by Mumtaj Begum dated 16.12.1996 to the Principal Medical Officer as well as the report of PMO were taken into consideration before coming to the final conclusion. In such a circumstance, we are of the view that the Tribunal has committed an error in arriving a conclusion that it is a case of "no evidence" before the Enquiry Officer. On the other hand, as rightly pointed out by the learned Additional Central Government standing counsel, the statement of the above mentioned prosecution witnesses and the content of the documents relied upon by the Enquiry Officer could not be brushed aside, particularly in the peculiar nature of the allegations made.

16.It is settled legal position that in a departmental proceeding, the requirement of strict evidence under Indian Evidence Act are not applicable. In a Departmental enquiry, the guilt can be arrived at on the preponderance of probability. The appreciation of evidence is the exclusive domain of the disciplinary authority, to consider the evidence on record and to render findings, whether charges have been proved or not. In judicial review, the Court or Tribunal has no power to traverse upon the jurisdiction and to arrive its own conclusion. Inasmuch as the Tribunal has concluded "it is a case of no evidence before the Enquiry Officer", we verified the entire enquiry report and extracted the relevant portions in the earlier part of our order to show that there were sufficient materials on the side of the Department, even though the complainant did not depose before the Enquiry Officer. Further, it is seen that in the disciplinary proceedings, the delinquent had also not asked for examination or cross examination or raise any objection for the absence of complainant during the course of enquiry.

17. It is the claim of the delinquent that even though the alleged misconduct committed by him is said to have happened on 13.12.1996, the complainant S. Mumtaj Begum had not complained about this to the Duty Doctor or to the Duty Nurse on the same day and according to him this will demonstrate the falsity of the complaint. As discussed above, and as seen from the evidence of Pws.1 and 2 as well as in the complaint, merely because she did not inform the incident on the same night, it cannot be concluded that there is no truth in it, particularly in the light of admitted factual position, viz., the presence of the complainant in the male ward since her nephew was taking treatment for snake bite and also the witnesses

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examined on the side of the defence to the same effect as well as the fact that she went along with the delinquent for collection of medicine. It is also available from the enquiry report that the delinquent M.Annamalai himself has accepted that he has called Mumtaj Begum to the sisters' duty room for giving medicine and one Murugan, Ward Boy during the examination by the Enquiry Officer as defence witness has also stated that Mumtaj Begum went behind M. Annamalai, Medical Assistant for getting medicine to the sister's duty room where the medicines are available. As discussed earlier, the another defence witness Andal admitted that she heard the shouting of Mumtaj Begum in the night of 13.12.1996. Though there is no direct witness to state that the said Annamalai misbehaved with Mumtaj Begum in the night of 13.12.1996, a perusal of the entire materials leads to an inference that such an incident had taken place on the misbehaviour of S.Annamalai.

18. It is unfortunate that the Tribunal has expressed that no eye witness to the incident was examined before the Enquiry Officer. The Tribunal has failed to take note that in the case of sexual harassment the complaint / statement of the lady should be considered in the real spirit since normally no decent lady will make such complaint or allegation against any man about the sexual harassment, as it may have disadvantage to her life, status in the society. Courts have to dispel a greater sense of responsibility and to be more sensitive while charges of sexual assault on woman.

19. The order of the disciplinary authority further shows that since the charges are of serious nature involving moral turpitude of the employee and finding that he is unfit to continue as a Government servant, imposed a penalty of dismissal from service. It is also relevant to note that the appellate authority though initially confirmed the order of dismissal passed by the original authority, on direction by the Central Administrative Tribunal in O.A.No.682 of 1998, reconsidered the matter afresh and modified the penalty of "dismissal from service" to "compulsory retirement" by order dated 05.09.2000. In such a circumstance, in a matter like this, when the Officer had an opportunity to participate in the enquiry by cross examining the Departmental witnesses and adducing defence witnesses and when all these relevant materials were considered by the original authority before imposition of punishment, affirmed by the appellate authority, we are of the view that interference by the Tribunal / Court is very limited. It is the exclusive domain of the disciplinary authority to consider the evidence on record and finding whether charges have been proved or not. The technical rules of evidence has no application in the disciplinary proceedings. In the light of the above principles and the materials placed before the Enquiry Officer as well as the orders of the original and appellate authority, we are of the considered view that the Tribunal; has committed serious error of law in

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appreciation of the evidence and coming to its own conclusion that the charges had not been proved.

In the light of our discussion, the impugned proceedings of the Central Administrative Tribunal, Chennai Bench dated 11.09.2001 made in O.A.No.40 of 2001 is quashed and the writ petition is allowed. No costs.

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Sd/

Asst.Registrar

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Sub Asst.Registrar

To

1. THE REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
HIGH COURT BUILDINGS
CHENNAI 600 104.

2. THE ADDITIONAL DIRECTOR GENERAL
UNION OF INDIA, AV HQ, AVADI,
CHENNAI-54.

3. THE SR. GENERAL MANAGER
HEAVY VEHICLES FACTORY
AVADI

4. THE RECORD KEEPER
VR SECTION
HIGH COURT, MADRAS

+ 1 CC TO MR.R. SINGARAVELU, ADVOCATE SR 33976

+ 1 CC TO MR.SM. DEENADAYALAN, ACGSC, SR 33826

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Order in
W.P.No.7220 of 2002

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